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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/722,949	11/27/2000	Frank M. Richmond	68050	5029

22242 7590 11/04/2003

FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/722,949

Applicant(s)

RICHMOND, FRANK M.

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 35,36 and 38-73 is/are pending in the application.
- 4a) Of the above claim(s) 39,43-47,57,61-65 and 72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35,36,38,40-42,48-56,58-60,66-71 and 73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The following office action is in response to the amendment filed on August 8, 2003. Claims 35, 36, and 38-73 are pending in the application. Claims 39, 43-47, 57, 61-65 and 72 are non-elected claims and are withdrawn from consideration.

#### ***Claim Rejections - 35 USC § 112***

Claims 36, 38, 40-42, 49-51, 53-56, 58-60 and 66-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 36, the scope of the claim is indefinite because claim 36 claims a fastener spaced apart from the resting surface. However, claim 35 already claims a fastener. Therefore, the examiner does not know if the fastener in claim 36 is a second fastener or the same fastener in claim 35. The examiner is examining the claim as “best understood” until further clarification is provide. The examiner is treating the fasteners in claims 35 and 36 as being the same fastener.

In regard to claim 53, line 14, the phrase “a first surface” should be “the first surface” because said surface was previously introduced in the claim. Appropriate correction is required.

In regard to claim 55, line 3, the phrase “a plane” should be “the plane” because the plane of the resting surface was previously introduced. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

1. Claims 35, 36, 40, 51 and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Murphy (6,131,361).

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In regard to claims 35, 36, 40 and 73 (as best understood), Murphy discloses an apparatus for installing building materials comprising a first surface 114 comprising a fastener 127, the first surface attached to a resting surface 116, at least one guide surface 120 continuous with the resting surface and extending away from a plane of the resting surface, at least one target surface 118 continuous with the guide surface and extending away from a plane of the resting surface, and a second resting surface 126. The fastener is spaced apart from the resting surface.

In regard to claim 48, Murphy discloses the claimed invention, wherein the device further comprises a positioning feature. The positioning feature is the slot formed integral with the holes. The slots aid in the positioning of the device. Therefore, they are a positioning feature.

In regard to claim 51, Murphy discloses the claimed invention, wherein the apparatus for installing building material is made from a material selected from the group consisting of wood, metal, plastic, and combinations thereof. Murphy discloses that the material could either be metal or plastic, column 1, lines 41-45.

***Claim Rejections - 35 USC § 103***

2. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy (6,131,361).

In regard to claim 38, Murphy discloses the claimed invention except for specifically disclosing a fastener component in combination with the fastener opening 127. However, Murphy does disclose the use of fasteners 150. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place fastener 150 in any of the fastener openings, depending on the orientation of the device, to secure the device or building

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material to the structure. The device, as shown, can be oriented in many different positions.

Thus, the fastening component 150 may also have to be located in many different locations.

3. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy (6,131,361) in view of Burgess (5,366,329).

In regard to claim 49, Murphy discloses the claimed invention except for disclosing the use of a “one material thickness” spacer block. Burgess teaches that it is known to use a “one material thickness” spacer block 5b to provide a space for a drywall panel to be inserted. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said height block or spacer into Murphy’s invention, because the spacer will provide additional clearance between the apparatus and the studs if needed. Further, the examiner contends that the use of spacers where needed is capable of being determined by one having ordinary skill in the art.

4. Claims 50 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy (6,131,361) in view of Guilmette (5,617,698).

In regard to claims 50 and 52, Murphy discloses the claimed invention, except for the use of a tee support or adjustable positioning device. Guilmette discloses the use of a tee shaped adjustable positioning device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said device into Murphy’s invention, because the device will aid the user in placing the panels. The device will help the user to hold the panel until the at least one apparatus for installing building materials is moved into position to hold the panel. Also, the positioning device could be used as a safety device if one or more of the apparatus for installing building materials failed.

***Allowable Subject Matter***

5. Claims 41, 42, and 71 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. Claims 53-56, 58-60, and 66-70 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

***Response to Arguments***

7. Applicant's arguments with respect to claims 35, 36, 38, 40 and 48-52 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031.

The examiner can normally be reached on Monday-Friday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

B.G. *B.G.*  
October 31, 2003



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600